

**Peter H. Glade, WSBA #15681**

PeterGlade@MHGM.com

**Matthew A. Levin, WSBA #31011**

MattLevin@MHGM.com

**David B. Markowitz, OSB #742046**

(admitted *pro hac vice*)

DavidMarkowitz@MHGM.com

**J. Matthew Donohue, OSB #065742**

(admitted *pro hac vice*)

MARKOWITZ, HERBOLD, GLADE

& MEHLHAF, P.C.

Suite 3000 Pacwest Center

1211 SW Fifth Avenue

Portland, OR 97204-3730

Tel: (503) 295-3085

Fax: (503) 323-9105

Attorneys for Defendant Progressive  
Max Insurance Company

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

**ELAINE FOSMIRE,**

CV No.: 3:10-CV-05291-JLR

Plaintiff,

vs.

**DECLARATION OF J. MATTHEW  
DONOHUE IN SUPPORT OF  
DEFENDANT'S MOTION TO  
EXCLUDE THE EXPERT REPORT OF  
NAYAK L. POLISSAR, PH.D.**

**PROGRESSIVE MAX INSURANCE  
COMPANY; PROGRESSIVE  
CASUALTY INSURANCE COMPANY;  
PROGRESSIVE DIRECT INSURANCE  
CO.; PROGRESSIVE CORPORATION,**

Defendants.

I, J. Matthew Donohue, declare as follows:

1. I am the attorney for defendant Progressive Max Insurance Company. I make  
this declaration in support of defendants' Motion to Exclude the Expert Report of Nayak L.

**DECLARATION OF J. MATTHEW DONOHUE - 1 -  
CV No.: 3:10-CV-05291-JLR**

**MARKOWITZ, HERBOLD,  
GLADE & MEHLHAF, P.C.**  
SUITE 3000 PACWEST CENTER  
1211 SW FIFTH AVENUE  
PORTLAND, OREGON 97204-3730  
(503) 295-3085

1 Polissar, PhD. Unless otherwise indicated, I make this declaration on personal knowledge,  
2 except for any items stated on information and belief, which I am informed and believe are  
3 true.

4 2. On October 11, 2010, Progressive produced to plaintiff information on 11,882  
5 UMPD claims paid to its insureds from May 2004 through June 2010 in the seven applicable  
6 states. This data was produced in an excel spreadsheet, Bates-numbered  
7 PROG\_FOSM016512 and includes, among other things: claim year, claim number, claim  
8 report date, policy ID number, policy start date, policy end date, policy state, total loss  
9 indicator, vehicle manufacturer, vehicle model, vehicle model year, odometer mileage, VIN,  
10 feature total payment amount and total deductible amount.  
11

12 3. Exhibit A is excerpts from the deposition of Nayak L. Polissar, Ph.D. dated  
13 November 30, 2010.

14 4. Exhibit B is excerpts from the deposition of Darrell Michael Harber dated  
15 December 1, 2010.

16 5. Exhibit C is the expert report of George R. Schink, Ph.D. in opposition to  
17 class certification.

18 6. Because the Polissar Report does not explain what preliminary analyses  
19 Polissar conducted to support his opinion, defendants' counsel requested production of the  
20 preliminary analyses, as well as other materials Polissar relied on. Although plaintiff's  
21 counsel produced some material before the November 30, 2010 deposition of Polissar,  
22 plaintiff's counsel produced a large volume of materials at the deposition (including a DVD  
23 of electronic information), and have continued to supplement materials related to Polissar's  
24 work as recently as March 18, 2011.  
25  
26

1 I hereby declare that the above statement is true to the best of my knowledge and  
2 belief, and that I understand it is made for use as evidence in court and is subject to penalty  
3 for perjury.

4 DATED this 5th day of April, 2011.

5 /s/ J. Matthew Donohue

6 \_\_\_\_\_  
7 J. Matthew Donohue, OSB #065742  
(admitted *pro hac vice*)

8 FOSM238286  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTORNEY CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2011, I have made service of the foregoing  
**DECLARATION OF J. MATTHEW DONOHUE IN SUPPORT OF DEFENDANT'S  
MOTION TO EXCLUDE THE EXPERT REPORT OF NAYAK L. POLISSAR, PH.D.** on  
the party/ies listed below in the manner indicated:

Van Bunch  
Bonnett Fairbourn Friedman & Balint, PC  
57 Carriage Hill  
Signal Mountain, TN 37377

☐ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Courier  
☐ Email vbunch@bffb.com  
☒ Electronically via USDC CM/ECF system

David A. Futscher  
Parry Deering Futscher & Sparks, PSC  
PO Box 2618  
Covington, KY 41012-2618

☐ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Courier  
☐ Email dfutscher@pdfslaw.com  
☒ Electronically via USDC CM/ECF system

Stephen M. Hansen  
Stephen M. Hansen, P.S.  
1703A Dock Street  
Tacoma, WA 98402-4441

☐ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Courier  
☐ Email steve@stephenmhansenlaw.com  
☒ Electronically via USDC CM/ECF system

Charles Clinton Hunter  
Debra Brewer Hayes  
Reich & Binstock LLP  
4265 San Felipe, Suite 1000  
Houston, TX 77027

☐ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Courier  
☐ Email chunter@rbfirm.net  
dhayes@dhayeslaw.com  
☒ Electronically via USDC CM/ECF system

Elaine A. Ryan  
Patricia N. Syverson  
Bonnett Fairbourn Friedman & Balint, PC  
2901 N. Central Avenue, Suite 1000  
Phoenix, AZ 85012

☐ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Courier  
☐ Email eryan@bffb.com  
psyverson@bffb.com  
☒ Electronically via USDC CM/ECF system

DATED this 5th day of April, 2011.

/s/ J. Matthew Donohue

\_\_\_\_\_  
J. Matthew Donohue, OSB #065742  
(admitted *pro hac vice*)  
Attorney for Defendant Progressive Max  
Insurance Company

**CERTIFICATE OF SERVICE**